



## REPORT OF THE GOVERNANCE COMMITTEE

### CHANGES TO THE COUNCIL'S CONSTITUTION AS A RESULT OF THE HEALTH AND SOCIAL CARE ACT 2012

#### Background

The Health and Social Care Act 2012 introduced the largest and most significant change to the NHS since its creation. The Act transfers public health functions back to local authorities with effect from the 1 April 2013. The Act requires the establishment of a Health and Wellbeing Board as an executive committee of the Council also with effect from 1 April 2013.

At its meeting on 19 September 2012, Council approved the membership of Havering's Shadow Health and Wellbeing Board (HWB) in line with legal requirements. The Shadow HWB has been meeting since March 2011 and, at its last meeting in February 2013, agreed to request specific rules of procedure required to comply with all relevant primary and secondary legislation affecting the HWB. The Governance Committee has now reviewed those rules of procedure proposed by the Shadow HWB. These are incorporated into the recommended changes to the Constitution along with additional changes required to integrate public health functions into the Constitution.

#### Powers & Governance

##### *Public Health*

Part 1 of the Health and Social Care Act confers the responsibility for public health functions directly onto local authorities. At present, public health is delivered by the local Primary Care Trust (PCT) (legally, NHS Havering, but operationally NHS North East London and City) by the Public Health Team. As of 1 April 2013 the local PCT will cease to exist. Arrangements are currently underway to incorporate the existing Public Health Team into the Council.

To fully incorporate the public health functions into the Council and enable the authority to meet its statutory responsibilities, numerous amendments will be required to the Constitution, (set out in Appendix 1). These changes include amendments to Parts 1, 2 and 3 of the Constitution, to include public health as a council function and to outline the role, function and responsibilities of the Director of Public Health and staff, the HWB and the Cabinet Member with responsibility for public health.

Section 12 of the Health and Social Care Act 2012 outlines the specific requirements of local authorities in exercising public health duties. In general, public health sets out to improve the health of residents. In particular, this means

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that the Council will, from 1 April 2013, have a duty to promote the health of the public, for which it may:

- (a) provide information and advice;
- (b) provide services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);
- (c) provide services or facilities for the prevention, diagnosis or treatment of illness;
- (d) provide financial incentives to encourage individuals to adopt healthier lifestyles;
- (e) provide assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;
- (f) provide or participating in the provision of training for persons working or seeking to work in the field of health improvement;
- (g) make available the services of any person or any facilities.

The Health and Social Care Act 2012 requires local authorities to appoint a Director of Public Health (DPH) to exercise and have responsibility for the Council's public health function. It is intended that the newly appointed DPH will become a member of the Council's Corporate Management Team. Amendments to the Constitution are proposed to reflect this.

### *Health and Wellbeing Board*

The Health and Wellbeing Board is required to be an executive committee of the Council. This is an entirely new form of local government body and is at odds with the division of executive functions which are the responsibility of the Leader and the Cabinet, and non-executive functions which are carried out by Committees on behalf of the Council as a whole. It is understood that the Department of Health did not take advice from the Department of Communities and Local Government before creating the arrangement. The Board comprises statutory members which are detailed in Appendix 2. Again this is a unique arrangement in local government as non-councillors - in the form of external health representatives and senior officers of the Council - are full members of the Committee. The Board has a duty to develop and monitor a Joint Strategic Needs Assessment (JSNA) for the borough and to use this to further develop and implement a Health and Wellbeing Strategy (HWBS).

The Board is expected to work to align health, social care and public health commissioning plans and to promote joint-commissioning and integrated provision. The Shadow HWB agreed its purpose on 25 July 2012 was to work in partnership to ensure people in Havering have services of the highest quality which promote their health and wellbeing. The HWB committed to achieving greater integrated

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working and better use of collective resources to improve the wellbeing of Havering residents and to work with Health, Social Care and other local services to narrow inequalities and improve outcomes for local residents.

Whilst the Health and Social Care Act 2012 requires that the Board function in the same manner as any other local authority committee, the Board is unique in several respects. For example:

- The Board's core membership is fixed by the Health and Social Care Act 2012, whilst allowing for additional members to be appointed;
- CCG and Healthwatch representatives sit alongside elected councillors; and
- certain local authority officers are required to be members
- Councillor members of the Board are directly appointed by the Leader of the Council

Given this unique arrangement, the Department of Health drafted Regulations in early 2013, which were laid before Parliament on 8 February 2013, to amend or dis-apply various aspects of legislation covering council committees in order to allow boards to run as intended. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 also come into force on the 1 April 2013.

These Regulations do not affect the current setup of Havering's Shadow HWB. The specific provisions amended in the Regulations related to voting rights (enabling equal rights to all Board members), ability to establish sub-committees or delegate to officers (makes the Council restrict this power), dis-applying rules around political proportionality and easing restrictions on membership disqualifications (which would have otherwise restricted NHS representatives from membership). However, all other statutory requirements on committees and their membership apply in relation to disclosures of personal and financial interests.

It is possible for the Council to direct that certain members of the HWB are to be non-voting members, but before making such a direction the Council must consult with the HWB.

### **Further Changes**

As the public health team transfers to the Council and working arrangements are finalised, it is possible that further changes will be brought forward to improve practice and delineate roles and procedures.

A sub-committee of the Health and Wellbeing Board - the Health Protection Forum - was agreed by the Board in February. The Council is asked to agree the addition of the Forum to the Constitution, whilst noting that further changes may be required as the arrangements for this body are finalised. The formation of any further sub-committee will likewise need the approval of the Council.

**The Committee accordingly now RECOMMENDS to the Council that:**

- 1. The recommended changes to the Council's Constitution as detailed in Appendix 1 to this report, be adopted.**
- 2. The Membership of the Health and Wellbeing Board as set out in Appendix 2 to this report, be noted.**